

May 6, 2004

MEMORANDUM

To: Mr. Dalton B. Floyd, Jr., Chairman, and Members, Commission on Higher Education

From: Dr. Vermelle J. Johnson, Chair, and Members, Committee on Academic Affairs and Licensing

**Consideration of Amendment to Licensing Statute:
Section 59-58-20. Definitions and Section 59-58-30. Exclusions**

Background

The staff requests approval to seek an amendment to the Nonpublic Postsecondary Institution License Act. The staff of the Commission periodically review the licensing requirements as prescribed by statute and regulations and suggest changes to the requirements for licensing nonpublic postsecondary institutions. Suggestions for changes typically derive from situations that have arisen based on licensing activities, on application of the requirements for licensure, or from trends in higher education.

The changes proposed here are made at the recommendation of the Office of the Attorney General. The two proposed changes refine the statutory language to make it better align with the intent of the licensing function and with the application by the Commission of its statutory jurisdiction. The proposed changes are shown underlined and in context in **Attachment 1**. The changes would:

(1) Explicitly exempt from the definition of “salesman,” “agent,” or “solicitor” administrators and faculty who make occasional or incidental informational public appearances (such as at high school recruiting fairs), and

(2) Explicitly exempt from licensure degree-granting institutions accredited by an accrediting agency recognized by the U.S. Department of Education that conduct occasional or incidental recruiting activities (such as at high school

recruiting fairs or through seasonal recruitment advertising) rather than continuing and regular activities that would otherwise establish an actual presence in South Carolina as defined within the Act.

Recommendation

The Committee on Academic Affairs and Licensing recommends that the Commission approve the proposed change to the licensing statute as shown in Attachment I and authorize the staff to pursue through the General Assembly the change in the statute.

SECTION 59-58-20. Definitions.

As used in this Chapter:

- (1) "Commission" means the South Carolina Commission on Higher Education.
- (2) "Agency" means the South Carolina Commission on Higher Education.
- (3) "Commissioner" means the Chief Executive Officer of the South Carolina Commission on Higher Education, or a person designated by the Commissioner to administer the provisions of this Chapter.
- (4) "Nonpublic educational institution" includes, but is not limited to, any educational entity operating or soliciting in South Carolina and is not owned or operated in whole or in part by the State of South Carolina offering resident or correspondence courses beyond the secondary school level to students upon the payment of tuition or fees.
- (5) "Program" means an organized unit of subject matter in which instruction is offered within a given time and for which credit is given toward completion of training toward a predetermined occupational or academic credential.
- (6) "Degree" includes, but is not limited to, any academic credential or designation not less than, but including associate, bachelor, master, doctor or fellow, whether earned or honorary, which signifies, purports or is generally taken to signify partial or satisfactory completion of the requirements of an academic, occupational, business or other program of study beyond the secondary school level.
- (7) "Occupational objective" includes a certificate or diploma without any academic designation that may be used to signify partial or satisfactory completion of educational training oriented toward a specific occupation or skill taught in a course or program of study beyond the secondary school level.
- (8) "Degree granting institution" includes, but is not limited to, any nonpublic educational institution awarding, selling, conferring, bestowing, or giving, or purporting to award, sell, confer, bestow or give a degree as defined in this Chapter.
- (9) "License" means an agency permit, approval or some similar form of written permission.

- (10) "Salesman," "agent," or "solicitor" means any person who, for remuneration, enrolls or seeks to enroll, away from the nonpublic educational institution's premises, a resident of South Carolina in courses or programs of instruction or study offered by the nonpublic educational institution. Administrators and faculty who make occasional or incidental informational public appearances (such as at high school recruiting fairs), but whose primary task does not include service as a paid recruiter, are exempted from this definition.
- (11) "Agent permit" means a nontransferable written authorization issued to a natural person, pursuant to the provisions of this Chapter, to solicit persons residing in South Carolina to enroll in courses or programs of instruction offered by nonpublic educational institutions.
- (12) "Revoke" means to rescind, cancel or withdraw. Upon revocation of an institution's license, the institution must immediately cease operation.
- (13) "Suspend" means to stop. During a period of suspension, the institution must immediately cease operation for a specified period.
- (14) "Probation" means a specified period during which an institution cannot enroll, solicit or recruit new students.
- (15) "Person" means any individual, firm, partnership, association, organization, corporation, trust or other legal entity or combination of the above.
- (16) "Entity" includes, but is not limited to, any person or group of persons.
- (17) "Operating or soliciting" refers to having actual presence within the State of South Carolina and includes for the purposes of application of this Chapter:
- (a) an instructional or administrative site within South Carolina whether owned, leased, rented, or provided without charge;
 - (b) instruction whether theory or clinical within or originating from South Carolina utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;
 - (c) an agent, recruiter, in-state liaison personnel, institution, or business that solicits for enrollment or credits or for the award of an educational or occupational credential; and
 - (d) advertising, promotional material, or public solicitation in any form that targets South Carolina residents through distribution or advertising in the state.
- (18) "Religious or theological training" is the awarding of nonacademic degrees, diplomas, or certificates with a specific theological, biblical, divinity, or other religious designation.

SECTION 59-58-30. Exclusions.

The definition of "nonpublic educational institution" does not include the following:

- (1) Any degree-granting school, institute, college, junior college, university or entity that was chartered by the Secretary of State before 1953;
- (2) Institutions that:
 - (a) are independent or church-related,
 - (b) are two or four-year degree granting,
 - (c) have their primary emphasis on liberal arts,
 - (d) are accredited by the Southern Association of Colleges and Schools,
 - (e) are nonprofit, and
 - (f) have their primary place of business in South Carolina;
- (3) Institutions offering courses of instruction only at the kindergarten through high school level;
- (4) Institutions whose sole purpose is religious or theological training;
- (5) Institutions offering noncredit bearing courses exclusively for avocational purposes, as determined by the Commissioner;
- (6) Institutions directly supported, entirely or partly, by the State of South Carolina;
- (7) Aviation institutions or instructors that offer flight training with the statement or implication that their primary objective is to train persons for personal or recreational purposes and not for gainful employment;
- (8) Courses or programs regulated and licensed or approved under an occupational licensing law of the State of South Carolina;
- (9) Noncredit bearing courses or programs sponsored by employers solely for the training of their employees if;
 - (a) the training is conducted by an employee of the sponsoring employer or if the sponsoring employer contracts with a provider to conduct the training;

- (b) the sponsoring employer bears the expense of providing the training by paying the training provider directly, and this provision does not mean paying the employee after the employee pays; and
 - (c) The sponsoring employer allows employees to attend the training on company time if the training takes place during regular work hours.
- (10) Noncredit bearing courses or programs that do not prepare or qualify individuals for employment in any occupation or trade sponsored by recognized trade, business or professional organizations solely for the instruction of their members;
- (11) Institutions that offer only noncredit bearing intensive review courses such as those designed to prepare students for certified public accountancy tests, law school aptitude tests, bar examinations, medical college admissions tests, and other license preparation tests.
- (12) Out-of-state institutions that formally collaborate with public South Carolina institutions in offering distance education coursework in South Carolina and where the South Carolina institution offers the degree.
- (13) Institutions that offer programs and courses on federal military installations.
- (14) Degree-granting institutions accredited by an accrediting agency recognized by the U.S. Department of Education that conduct occasional or incidental recruiting activities (such as at high school recruiting fairs or through seasonal recruitment advertising) rather than continuing and regular activities that would otherwise establish an actual presence in South Carolina as defined within this Act.